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Supreme Court of the United States

October Term, 1957

No. 563

In the Matter

of

The Arbitration of Certain Differences between

DEVIDAYAL (SALES) LTD.,

Petitioner,

and

IIDA & CO., NEW YORK, INC.,

Respondent.

BRIEF ON BEHALF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

ALFRED RATHHFIM,
Attorney for Respondent,
61 Broadway,
New York 6, N. Y.

SIDNEY ABRAMS,
ALVIN L. KASSEL,
of Counsel.

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Questions Presented

The petition purports to present a Federal question under the Fourteenth Amendment but couples with this three questions under purely local New York law (p. 2) and quotes local statutes having no Federal bearing at all.

Jurisdiction

The petitioner sets forth the due process and equal protection provisions of the Fourteenth Amendment (p. 4) and contents itself with the bare assertion that the decision of the New York Court of Appeals "operates (1) to deny the petitioners the equal protection of the laws, and (2) to deprive them of their property without due process of the

law" (p. 3, sub. Jurisdiction). Nowhere in the petition is this developed or again referred to and the petitioner nowhere shows in what manner it was denied equal protection or deprived of property without due process or in what respect its constitutional rights were violated.

ARGUMENT

A. There Is No Federal Question Presented.

The bare assertion that a Federal question exists is not sufficient to invoke the jurisdiction of this Court. In *Hamblin* v. *Western Land Company*, 147 U. S. 531, the Court wrote (p. 532):

> "A real, and not a fictitious, Federal question is essential to the jurisdiction of this court over the judgments of state courts. Milligar v. Hartupee, 6 Wall. 258; New Orleans v. New Orleans Water Works Co., 142 U. S. 79, 87. In the latter case it was said that 'the bare averment of a Federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.'"

To the same effect:

> *New Orleans Water Works Co.* v. *Louisiana*, 185 U. S. 336, 344-346.

B. No Federal Question Was Presented Below.

The Court has no jurisdiction primarily because no Federal question is presented. Even if there were a Federal question, it is not available to petitioner because it was never raised below, either before the Arbitrator, the Special Term, the Appellate Division, or the Court of Appeals.

A Federal question could not have been raised in this case in any appellate court for the petitioner itself expressly limited its appeal "solely to the question of damages" (fol. 71). If petitioner's argument were sound, that the decision of the New York Court of Appeals in deciding against it *ipso facto* raised a Federal question, then every litigant unsuccessful in the state court could seek a review by this Court through the simple expedient of merely claiming violation of constitutional guaranties. Petitioner admits that no Federal question was raised below (p. 7) and tries to excuse the omission by reference to *Saunders* v. *Shaw*, 244 U. S. 317. That case is not applicable on the facts herein.

Nothing is better settled in Federal jurisprudence than the principle that the jurisdiction of this Court depends on the existence of a right, title, privilege or immunity under the Federal Constitution or laws set up and denied in the state courts. This Court said in *Southwestern Bell Telephone Co.* v. *Oklahoma*, 303 U. S. 206, 212, 213:

> "We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it."

To the same effect:

Durley v. *Mayo*, 351 U. S. 277, 281.
Stembridge v. *Georgia*, 343 U. S. 541, 547.
Honeyman v. *Hanan*, 300 U. S. 14, 18.

C. Petitioner's Real Grievance Is that the State Court Decided the Case Against It.

Apart from referring to the obvious proposition that the judicial acts of state courts are subject to the prescriptions of the Fourteenth Amendment (p. 7) the petitioner's entire argument is concerned with its claim that the Arbitrator applied the wrong rule of damages and that the lower courts should have corrected this claimed error of law (pp. 8-12). The same arguments were unsuccessfully urged below. It is not the function of this Court to review a claimed error of local law not involving a Federal question.

This Court wrote in *American Railway Express Company* v. *Kentucky*, 273 U. S. 269, 273:

> "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law. Arrowsmith v. Harmoning, 118 U. S. 194, 195; Iowa Central Ry. Co. v. Iowa, 160 U. S. 389, 393; Tracy v. Ginzberg, 205 U. S. 170, 177; Bonner v. Gorman, 213 U. S. 86, 91; McDonald v. Oregon R.R. & Nav. Co., 233 U. S. 665, 669."

In *Patterson* v. *Colorado*, 205 U. S. 454, 461, this Court wrote:

> "But in general the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed."

In *McDonald* v. *Oregon Railroad & Navigation Co.*, 233 U. S. 665, 669, 670, this Court wrote:

> "It is elementary and needs no citation of authority to show that the due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been com-

mitted by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character."

Petitioner argues that the effect of the breach of contract should have been determined by the law of India (p. 8). This argument was not available to it even in the state appellate courts because the appeal was limited to the question of damages (fol. 71). Even were the appeal not so limited, the decision of a state court as to whether it should apply a foreign law or its own is a question of local law which does not raise any Federal question and with which this Court will not concern itself. *Kryger* v. *Wilson*, 242 U. S. 171, 176; *Wells* v. *Simonds Abrasive Co.*, 345 U. S. 514, 516.

CONCLUSION

Since there is no Federal question and none was raised in the state courts, the petition should be denied.

Respectfully submitted,

ALFRED RATHHEIM,
Attorney for Respondent.

SIDNEY ABRAMS,
ALVIN L. KASSEL,
of Counsel.